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IN THE

Supreme Court of the United States

October Term, 1978

No. 78-1126

JOSEPH HOAGLAND, DUANE FERDIG,
AND JON HOAGLAND,
Defendants/Appellants,

vs.

STATE OF MINNESOTA,
Plaintiff/Appellee.

ON APPEAL FROM THE SUPREME COURT
FOR THE STATE OF MINNESOTA

MOTION TO DISMISS OR AFFIRM

Of Counsel:
JOHN H. DANIELS, JR.
Special Assistant
Attorney General

WARREN SPANNAUS
Attorney General
State of Minnesota
THOMAS L. FABEL
Deputy Attorney General
820 American Center Building
St. Paul, Minn. 55101
Telephone: (612) 296-7575
Attorneys for Appellee

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The appellee moves the Court to dismiss the appeal herein or, in the alternative, to affirm the judgment of the Supreme Court of Minnesota on the grounds that the judgment of the supreme court is clearly correct and that the questions raised by this appeal are so unsubstantial as not to warrant further argument.

STATEMENT

This is a direct appeal from a judgment of the Supreme Court of Minnesota, entered on September 15, 1978, affirming appellants' convictions of obstructing legal process, in violation of Minn. Stat. § 609.50 (1978). *State v. Hoagland*, 270 N.W.2d 778 (1978).

On the evening of October 15, 1976, at approximately 10 p.m., a state conservation officer was parked on a gravel road near the Joseph Hoagland farm. The officer had received information that gunshots had been fired in the area a few nights earlier and was investigating possible game violations.

While he waited, two vehicles subsequently identified as belonging to John Hoagland and Duane Ferdig passed by the conservation officer and drove in the direction of the Hoagland farm. Sometime afterwards a shot was fired. The conservation officer, who had seven years' experience as a game warden, determined that the shot originated from the Hoagland farm. Shortly thereafter the officer saw a deer running away from the farm and two people walking in a field adjacent to the Hoagland farmstead. They were walking toward the farm buildings.

The taking of deer at night is a gross misdemeanor under Minnesota law. Minn. Stat. § 97.55 subd. 9 (1978). The conservation officer, having observed the above circumstances, proceeded to the Hoagland farmyard. At the time he entered the Hoagland property he was wearing a Minnesota conservation officer uniform. After driving into the farmyard the officer approached Ferdig's pickup truck on foot and attempted to open the door. Ferdig told the officer to get his hands off the pickup or Ferdig would kill him. Following the immediate arrival of Jon and Joseph Hoagland, the officer explained that

he was investigating the gunshot and that he was entitled to enter the Hoagland farm to carry out his duties.

Joseph Hoagland ordered the officer to leave the premises unless he had a search warrant. The discussion became heated. Ferdig opened the back door of the Officer's car and attempted to remove a shotgun that had been confiscated from a hunter earlier that day. The officer prevented him from doing so. It became apparent that the officer could not proceed without assistance. The officer left the farmyard to wait for another officer.

Upon arrival of a second officer, the two officers walked onto the field where people had been seen earlier to determine whether a deer had been shot. As they walked across the field, two trucks drove out of the Hoagland farmyard directly toward them at a high rate of speed, stopping immediately beside the officers. Another heated discussion occurred, during which one officer was jostled and both were physically threatened by Jon Hoagland and Duane Ferdig. Joseph Hoagland again ordered the officers to leave his land. Threatened by the possibility of violence, the officers ceased their investigation and left the premises. Charges of obstructing legal process were subsequently filed. Appellants were convicted of these charges by an Itasca County, Minnesota, jury, which convictions have led to the instant appeal.

At trial and again on appeal, appellants argued that they were entitled to use reasonable force to resist the search of Joseph Hoagland's farmland. The contention was rejected both by the jury hearing the case and the Minnesota Supreme Court. In the Supreme Court, appellants' "right of resistance" argument was predicated upon an assertion that they had been subjected to an unlawful search. In support of this assertion, appellants challenged the constitutionality of Minn. Stat. §

97.50 subd. 2 (1978) which authorizes conservation officers to enter upon any land within the State of Minnesota to investigate violations of game and fish laws.

The Supreme Court rejected appellants' "right of resistance" argument on the ground that Minnesota law simply does not recognize such a defense. The court noted that other legal safeguards are available to protect citizens from unlawful searches and seizures and that a farmer's field in the middle of the night is not the proper site to settle such disputes. *State v. Hoagland*, 270 N.W.2d 778, 780 (Minn. 1978). The Court then went on to identify three independent reasons why the entry onto the Hoagland farm was, in any event, legal. First, the entry was permissible since a warrantless search of open fields does not contravene the fourth amendment. Second, it was permissible here because the circumstances required immediate action. And third, the authorization to enter provided by Minn. Stat. § 97.50 subd. 2 (1978) was valid and constitutional. 270 N.W.2d at 780. Appellants appeal only that portion of the decision of the Minnesota Court which upholds Minn. Stat. § 97.50 subd. 2 (1978).

ARGUMENT

I. THIS APPEAL MAY BE HEARD, IF AT ALL, BY WRIT OF CERTIORARI, NOT BY DIRECT APPEAL.

Appellants seek to appeal directly from the judgment of the court below on the ground that that decision upheld Minn. Stat. § 97.50 subd. 2 (1978) which authorizes conservation officers to conduct warrantless investigations on private land. Their claim of a right to direct appeal to this Court from the decision of the Minnesota Supreme Court is without merit. Review should be granted, if at all, by writ of certiorari.

Law governing the jurisdiction of this Court provides for review by direct appeal where a state decision is in favor of the validty of a state statute. 28 U.S.C. §1257. It is well settled, however, that a direct appeal is available only where the state court acted under the strong influence, if not command, of the statute. *May v. Anderson*, 345 U.S. 528, 530 (1953); Wright, Miller, Cooper & Gressman, Federal Practice and Procedure: *Jurisdiction* § 4012 at 609. Such is not the case in the instant appeal.

The decision of the court below was based upon the holding that appellants had no right to forcibly resist an unlawful search by law enforcement authorities. Following that holding, the Court proceeded, perhaps gratuitously, to also hold that the search of the Hoagland farm was lawful. This holding is based on three alternative grounds, one of which was that Minn. Stat. § 97.50 subd. 2 (1978) authorizing entry on private land by conservation officers was constitutional.

Thus, it is seen that the decision is not one that rests solely or even primarily, upon the operation of Minn. Stat. § 97.50 subd. 2 (1978). Hence, it cannot be said that the decision rests

upon the strong influence, if not command of that section. Accordingly, appellants' claim of a right to a direct appeal to this Court is without merit. Review should be granted, if at all, by way of certiorari.

II. THE DECISION OF THE MINNESOTA COURT SHOULD BE SUMMARILY AFFIRMED.

Appellants' contention does not merit consideration by the Supreme Court. The judgment of the court below is clearly correct. Moreover, the question raised by appellants is so unsubstantial as not to warrant further argument. Accordingly, this appeal should be summarily affirmed pursuant to U.S. Sup. Ct. Rule 16.

Rule 16 provides that this Court may consider a motion to affirm on "any grounds" presented by an appellee. U.S. Sup. Ct. Rule 16(d). It has long been held that where the questions on which a lower court decision is based are so wanting in substance as not to need further argument, summary affirmance will be granted. *Hodges v. Snyder*, 261 U.S. 600 (1923); *City of Boston v. Jackson*, 260 U.S. 309 (1922). Summary affirmance is also warranted where the questions raised by appellant are so plainly foreclosed by decisions of this Court as to make further argument unnecessary. *Del Poso v. Wilson Cypress Co.*, 269 U.S. 82 (1925). Both of the above standards apply in the instant case.

Appellants do not challenge the Minnesota court's rejection of appellants' asserted right to forcibly resist a search. Similarly, appellants do not challenge two of the three separate grounds upon which the search was deemed lawful. Appellants' challenge runs soley to Minn. Stat. § 97.50 subd. 2 (1978). However, a decision, by this Court that Minn. Stat. § 97.50 subd. 2 (1978) is somehow unconstitutional would not affect

the outcome of this case as independent grounds exist to uphold the search. Moreover, the entire holding on the legality of the search is collateral to the central thrust of the Court's decision, namely, that forcible self-help is not available to resist a search, and therefore could be characterized as mere *dicta*. Hence, the issue raised on this appeal is not substantial.

In addition, the decisions of this Court clearly foreclose any possibility that appellants would succeed on the merits of their claim. Section 97.50 subd. 2 is patently constitutional. That section states:

> The commissioner, director, game refuge patrolmen, and conservation officers are hereby authorized and empowered to enter upon any lands within the state for the purpose of carrying out the duties and functions of the division, *or to make investigations of any violations of the game and fish laws*, and in aid thereof to take affidavits upon oath administered by them, and to cause proceedings to be instituted if proofs at hand warrant it.

Minn. Stat. § 97.50 subd. 2 (1978) (emphasis added). The section, as applied to this case, authorizes entry onto private land to investigate possible criminal violations. It is a mere codification of the "open fields" exception to the fourth amendment prohibition against unconscionable searches which was also relied upon by the court below. This Court has consistently held that a search of open fields does not violate an expectation of privacy and does not violate the protection afforded by the fourth amendment. *Air Pollution Variance Board v. Western Alfalfa Corp.*, 416 U.S. 861 (1974); *Hester v. United States*, 265 U.S. 57 (1924).

In *Air Pollution Variance Board v. Western Alfalfa Corp., supra,* a Colorado state health inspector entered the appellant corporation's outdoor premises without its knowledge or consent and without a warrant to make an "opacity test" of smoke being emitted from the plant's chimney. This Court rejected defendant's argument that the test constituted an unreasonable search and seizure and held that the case was covered by the "open fields" exception. In so doing, this Court reaffirmed the principle expressed in *Hester, supra,* that the fourth amendment does not apply to a search of open fields. In the context of this appeal, such is precisely the effect of Section 97.50 subd. 2.

Appellants argue that this Court should consider the constitutionality of Section 97.50 subd. 2 in light of its recent decision in *Marshall v. Barlow's, Inc.*, —— U.S. ——, 98 S. Ct. 1816 (1978). *See also Michigan v. Tyler*, —— U.S. ——, 98 S. Ct. 1942 (1978). These cases are inapposite as they deal with the propriety of administrative searches by government agents. The instant case involves a criminal investigation by a peace officer of the State of Minnesota. The standards enunciated in *Marshall v. Barlow's, Inc.*, and *Michigan v. Tyler* are simply of no significance to this appeal.

In summary, the judgment of the court below is clearly correct. There is no need for further argument on its merits. Moreover, appellants' challenge of Minn. Stat. § 97.50 subd. 2 (1978) is collateral to the question of appellants' guilt or innocence and of no consequence to the outcome of this case. The decision of the Minnesota Supreme Court should be affirmed.

CONCLUSION

Appellee respectfully submits, therefore, that the appellants lack jurisdiction to appeal this matter and, further, that no substantial question is presented by the appeal. Appellee respectfully moves the Court to dismiss the appeal or, in the alternative, to affirm the judgment entered in the cause by the Supreme Court of Minnesota.

Respectfully submitted,

WARREN SPANNAUS
Attorney General
State of Minnesota
THOMAS L. FABEL
Deputy Attorney General
820 American Center Building
St. Paul, Minn. 55101
Telephone: (612) 296-7575

Of Counsel:
JOHN H. DANIELS, JR.
Special Assistant
Attorney General